

THE STATE OF NEW HAMPSHIRE

83-12-F

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July 21, 1983

His Excellency, John H. Sununu
Governor of the State of New Hampshire
State House
Concord, New Hampshire 03301

Your Excellency:

Our office was asked for an opinion regarding the method for appointing municipal probation officers required by Chapter 461 of the Laws of 1983 which establishes a new department of corrections. A copy of that opinion is attached. In light of your request for clarification of the reorganization procedures for all state agencies affected by reorganization legislation, we have prepared this opinion as a means of clarifying the reorganization plan for the new department of corrections.

Chapter 461 includes within the department of corrections a division of administration, a division of field services and a division of adult services. The division of administration is responsible for accounting, personnel, records, property, grants and planning; the division of field services is responsible for supervising adults placed on probation and inmates placed on parole; the division of adult services is responsible for the operation of the state prison and adult correctional and detention facilities. See RSA 21-G:4 as inserted by section 1 of Chapter 461.

The duties of the existing agencies responsible for these functions have been transferred to the new department. Chapter 461, section 2 states:



"The state prison board of trustees and the state board of probation are hereby abolished and all powers, functions, and duties of said boards, except as otherwise provided by this act, are hereby transferred to and vested in the commissioner of corrections. The tenure of members of the terminated boards shall terminate on the effective date of this act."

Section 6 provides for a similar transfer of the powers and duties of the probation department, the parole department and the state prison to the department of corrections.

Under the provisions of section 17, the "incumbent members of the state parole board as of the effective date of this act shall become members of the adult parole board and shall complete their terms." The adult parole board is a new board established by section 16 of the bill to be responsible for the paroling of prisoners.

Section 3 terminates the positions of warden and deputy warden of the state prison, director of probation and state parole officer and states that the "tenure of incumbents in these positions shall terminate on the effective date of this act." The powers and duties of these officials are "transferred to and vested in the commissioner of corrections."

Under section 25 of the chapter, the "governor, with the consent of the council, shall appoint the commissioner of corrections before August 1, 1983."

The question raised by Ch. 461 is what is to occur in the transition period, between July 1, 1983 and the point at which the new department of corrections is operational. Section 22 of Ch. 461 provides:

"In the event that House Bill 1 of the 1983 regular session of the general court, the executive branch reorganization act of 1983, becomes law, any reorganization, transition or implementation provisions of this act shall be superseded by any conflicting provisions of House Bill 1."

As we indicated to you in our opinion of June 28, 1983 regarding the reorganization of the department of administrative services, under HB 1, the transfer or abolition of each agency transferred or abolished by the General Court will become effective following approval of an implementation plan by the

Joint Committee on Reorganization. Laws 1983, Ch. 372, section 5, II. Because HB 1 (now Laws 1983, Ch. 372) provides for specific implementation procedures, including the development of an implementation plan, I believe that it was the intention of the legislature that the provisions of HB 1 should control.

Although Chapter 461 does differ in some respects from Chapter 416, which established the department of administrative services, the provision in the department of corrections act which states that HB 1 provisions regarding transition, reorganization or implementation supersede any other such provisions of the bill, must be interpreted as legislative intent to follow the procedures of HB 1. It is therefore apparent that the officials and boards which are abolished under Chapter 461 continue to perform their functions after July 1, 1983, until the effective date of the operation of the new department.

Under section 3 of Ch. 461, the tenure of the director of probation is to "terminate on the effective date of this act." Section 19 provides, however, that on

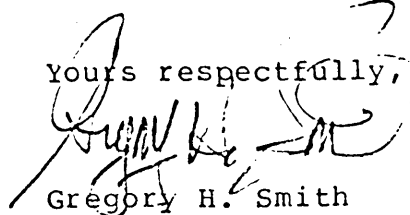
"the effective date of the implementation plan specified in paragraph III of section 32 of this act, the incumbent director of probation shall become the first director of the division of field services and shall serve in that office until July 1, 1985. At that time, or earlier if the position becomes vacant, the commissioner shall nominate a director for appointment."
(emphasis added)

This provision contemplates the director of probation remaining in his position until the implementation plan takes effect and he becomes the director of the division of field services. A contrary interpretation would lead to the anomalous result of the director terminating on July 1, 1983, only to assume the functions of the director of the new division at some point in the future. Similarly, I interpret the language in sections 2 and 3 providing that the tenure of incumbent board of trustees and officials is to terminate on the effective date of this act to mean that abolition is to occur on the effective date of the implementation plan, consistent with HB 1.

Therefore, in the absence of intent to grant these powers to the commissioner upon his appointment, the day-to-day functions of the boards and departments affected by Chapter 461 must continue in the same manner provided under pre-existing law until the implementation plan takes effect.

Please let us know if you have any further questions on this matter.

Yours respectfully,

A handwritten signature in dark ink, appearing to read "Gregory H. Smith", is written over the typed name.

Gregory H. Smith
Attorney General

GHS:DLP:ab
enclosure
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